

Neutral Citation No: [2025] NICC 26

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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 02/07/2025

IN THE CROWN COURT FOR THE DIVISION OF LONDONDERRY

THE KING

v

DARYL PATTON

SENTENCING REMARKS

HHJ NEIL RAFFERTY KC

Facts/Background

[1] The defendant pleaded guilty to a number of drugs related offences on the 17th of December 2024. The individual offences were helpfully set out in the Prosecution opening and I have incorporated them into this sentencing decision.

[2] This prosecution arises out of the Encrochat series of cases which are currently working their way through the courts. Briefly, the Encrochat mobile network advertised itself as a highly encrypted and secure platform providing a secure means of communication between individuals using the telephones and network. The attraction for those involved in criminal activity is obvious. French police gained access to the network and thereby access to the communications between a very significant number of people worldwide. Thereafter, the information captured was geolocated and provided to law enforcement bodies. In the UK the National Crime Agency is the central agency which received the material. Each Encrochat user had a different username. In this case the username attributed to the defendant is

“massive-movers”. Given his plea of guilty on a full fact’s basis, I need not set out the attribution material. It is, however, helpful to set out the summary of each count.

[3] At paragraph 5 the prosecution opening contains the following summary of each count including the usernames connected with the offences:-

“Count 1 Conspiracy to possess Class A (cocaine) w/intent to supply

Messages from cuthoor to massive-movers on 03.04.20 from asking for a quarter of “pure” and then for a half ounce for him and his friend costing £700.

See statement of Shay Quinn at p.224 - 225

Count 3 Conspiracy to fraudulently import Class A (cocaine)

Messages between count.orlock and massive-movers from 02.04.20 to 05.04.20 where count.orlock states he has contacts in Panama, and Columbia to Spain and the Netherlands as well as Ecuador, Panama and Venezuela. [Messages between count.orlock and greyheadirl on 3.4.20] and messages between massive-movers and royalbanana on 04.04.20.

See statement of Jonathan Cunningham at p.160 - 161

See images sent by massive-movers to count.orlock one showing twelve wrapped blocks, another is a close up image of a block with a horseshoe logo which has been noted by police on 1kg blocks of cocaine a third image is a white block with “1500” stamped on it.

See statement of Jonathan Cunningham at p.162.

Count 4 Conspiracy to fraudulently import Class A (cocaine)

Messages between count.orlock and massive-movers and others from 25.4.20 to 26.4.20

Count 9 Conspiracy to possess Class A (cocaine) w/intent to supply

Messages between massive-movers and boboyayo on 03.04.20 showing pictures of loose white powder. Message from boboyayo “500 on rock there 180 of the small dusty rocks mate”. Reply from massive-movers “Make it up to 3lb if you can”.

Messages on 04.04.20 including a photo of a package on scales which show a reading of "644" and message which states "625 plus package how long you man be". Messages between these parties on 04.04.20 from 14:43 to 15:08 suggest delivery of this package.

See statement Warren Shaw at p.284 - 286

Count 30 Conspiracy to possess Class A (cocaine) w/intent to supply

Messages between massive-movers and saggysloth on 27.3.20 from 13:28 to 13:30 and on 29.3.20 from 16:12 to 16:14 and 16:16 where "saggysloth" tells "massive-movers" that he has got "tops" for him and they discuss the smell. Saggysloth asks him if he wants 10 on Monday and massive-movers confirms this and asks if "45 is the best [price] he can do. Reference to the stamp being a cat.

See statement Jonathan Cunningham at p.202 - 203

See Report of Shay Quinn detailing messages at p.202 – 203 & p.205 (final message) to p.208 including image of block with a cat logo shown at p.207.

Count 31 Fraudulently importing Class A (cocaine)

Messages between massive-movers and saggysloth up to 2.4.20 at 13:25 referring to delivery of 15 "bits" or "tops" (cocaine) at 45,000 each. Messages and images to royalbanana in respect of collection of drugs at 13:26 and at 14:40 reference to opening packages. Message on 2.4.20 at 14:55 massive-movers offers a "chunk" of it to royalbanana.

On 02.04.20 at 11:54:13 Massive-movers sends image block white powder with "cat" symbol see p.460 for message and p.501 for image from exhibits

See statement Shay Quinn at p.211

See exhibits

Page 456 01.04.2020 at 12:30:38

Page 457 message on 01.04.2020 at 13:53 – 14:24 collection from Dundalk in recovery vehicle.

Page 458 – 459 – saggysloth tells massive-movers will be 15 bits/tops to be collected at Junction 17 M1 Dundalk area.

Page 460 – massive-movers sends message to royalbanana again confirmed 15 at 45000.

Page 461 message on 02.04.20 at 12:41:35 – massive-movers confirms his man is just coming through newry.

Page 462 – message on 02.04.20 between 12:49:33 and 13:25 they confirm type of vehicles travelling in and saggysloth tells massive-movers “I’m at 17 in a black 7 series. He can follow me off the main road till we meet the silver polo and then massive-movers sends four messages stating “2 secs” and at 13:12:26 says “Sorted”

Royalbanana sends three separate images (twice) ending in “...e3b”, “...bd5” and “...bba” shown at pages 518 – 520 of exhibits showing blocks of white powder.

Page 463 – further messages from royalbanana describing appearance and smell and at 14:55:23 massive-movers offers him a chunk of it.

Count 32 Conspiracy to possess Class A (cocaine) w/intent to supply

Messages between 26.3.20 and 30.3.20 with royalbanana making arrangements about bits to “wrap up market” wanting “the north” to themselves. Discussions continue into 29.3.20.

Count 33 Being concerned in the supply of Class A (cocaine)

Messages from royalbanana asking massive-movers if he could get him a few grams for a sniff. Massive-movers replies “yes I’ll sort no problem”.

Count 34 Possession of Class A (cocaine) w/intent to supply

Messages to supersonicnose on 28.3.20 saying that he held a bit back of the last 2 and that he owes for 4 and it was stamped “Omar” and reference to getting 2 and then another 2 the week before. On 31.3.20 refers to having “half an Omar there”.

Count 35 Offering to supply Class A (cocaine)

Message to royalbanana on 29.3.20 saying he will give him “a bit of it”, this follows messages referring to cocaine.

Count 36 Possession of a Class A drug (cocaine) w/intent to supply

Messages to royalbanana on 29.3.20 saying that he got bits of sav 3 weeks ago, he later says he got 7.

Count 37 Possession of a Class B drug (cannabis) w/intent to supply

Message from boboyayo to massive-movers on 20.4.20 asking if he has any “jackets” to which he replies on 21.4.20 at 13:38 “Yes mate” and “Need these few done really quick” and messages about sending them up. Massive-movers sends two images of herbal cannabis to boboyayo showing he has cannabis to sell. See statement Warren McKee at p.296 showing images.

Count 38 Conspiring to fraudulently import Class A (cocaine)

Messages between massive-movers and royalbanana from 17.04.20 to 21.04.20 in respect of getting “tops” from Cavan man (greyheadirl) from “flat” (Netherlands), reference to job leaving on Wednesday. In addition massive-movers exchanges messages with supersonicnose on 20.4.20 and tells him that he has had a delivery on Friday of a few bits.

Count 39 Possessing criminal property namely £120,000 cash. This count to be amended will relate to £250k cash.

Messages from massive-mover to royalbanana on 20.4.20 saying that he had paid him about 120k. Massive-movers complains that he has stood counting £130k. Messages between massive-movers and royalbanana on 20.4.20 at 19:04 when massive-movers tells royalbanana that he has “another 120 sitting” and then “more actually” on 21.4.20 at 17:40 massive-movers complains that he has stood counting 130k and royalbanana tells him he should buy a cash counting machine.”

Personal Circumstances

[4] The defendant is a 39 year old married man with a 10 year old son. He is currently on remand in HMP Maghaberry having completed a custodial sentence imposed at Laganside Crown Court in March 2024. He was sentenced to a total of 32 months imprisonment for possession of 1 kilo of cocaine with intent to supply. This offence was committed on the 30th of December 2022 when the defendant was on bail for the current offences. I set this out because it explains why, as a sentenced prisoner, the defendant was able to undertake a very significant number of rehabilitative courses. The Pre-Sentence Report (“PSR”), supported by certificates and testimonials, show that the defendant has filled his time in prison meaningfully. He is an “enhanced prisoner” and is a prison orderly entrusted with the prison stores and tuck shop; he has completed the GOALS, Making correct moves; and

Sycamore Tree programmes of work. In addition, he has involved himself with the “Spanner in the Works” theatre company and I have received a glowing reference from the Director of that theatrical company.

[5] Whilst growing up the defendant experienced a settled childhood and whilst not overly academic completed a course in metal fabrication and welding. He has an employment history save for periods of long term injury. In his written submissions Mr Magee KC highlights the following portion from the PSR – “It is telling that Mr. Patton indicated to Ms. Morgan that he has “wasted large parts of his life around the wrong people, he is adamant he wants a change of lifestyle and is determined to live a quieter life”. I have also had the benefit of a previous report from Dr. Adrian East. This report was for an earlier case, however, it does document that the defendant suffers an ongoing mental health issue which is characterised as a post-traumatic stress disorder following on from the aggravated vehicle taking offence. The PSR notes that the defendant “has struggled to come to terms with the harm he caused to the victim of this offence.”

[6] The PSR notes that the defendant has no alcohol or substance issues and is assessed as a medium likelihood of reoffending.

Caselaw

[7] In a number of recent cases and Rooney hearings I have been referred to my sentencing decision in *R v O’Loughlin*. In that case, I was dealing with a number of offence types including drugs importation. I made it clear that I was basing my sentence upon totality and adopted a starting point of 18 years. A review of the Northern Irish authorities from the Northern Ireland Court of Appeal, demonstrates that there is a paucity of authority on large scale drugs supply/importation cases. In the leave judgement relating to *O’Loughlin*, Scofield J discussed the sentencing ranges applicable. He wrote:-

“[25]According to the relevant sentencing guideline published by the Sentencing Council in England and Wales, the starting point after contest with respect to the importation of Class A drugs, for a leading role, appears to range from 5 years (as opposed to 8 years and 6 months, as referred to by the applicant and the judge) to 14 years, depending on the category of harm. Where the harm is in category 1 because of the nature and amount of drugs involved, the starting point is 14 years (with a category range of 12-16 years’ custody). The Recorder referred to these guidelines with the usual “health warning”. They can provide something of a cross-check

and can be particularly helpful in identifying aggravating and mitigating factors but, as has been emphasised on many occasions, such guidelines from England and Wales are not binding in this jurisdiction.

[26] For my part, I consider the guideline cases from the Court of Appeal in this jurisdiction to be much more pertinent. The applicant's case is compared to that of *Hughes* (a Court of Appeal case) and *Gallagher* (a Crown Court sentencing exercise), in which significant quantities of drugs were "actually detected".

[8] *Hughes* involved consideration of the appropriate sentencing range for possession with intent to supply significant quantities of Class A drugs (see paragraphs [31] and [32]). That case concerned three brothers involved in the supply of Class A drugs. The brother who received the highest sentence was Gerard Hughes. It was increased from five years to six and a half years by the Court of Appeal on foot of a DPP's reference. A starting point of nine years was found to be appropriate in the context where 1.98kg of cocaine was recovered at between 4-8% purity and 15.95kg with 7% purity. The defendant had pleaded 'guilty' to two counts of possession of cocaine with intent to supply, one count of possession of cannabis with intent to supply, and one count of possession of amphetamine (class B).

[9] *Gallagher & Others* involved a drug gang concerned in the large scale supply of controlled drugs in Northern Ireland in which drugs to the value of between £2m – £2.5m were seized. The offending took place over the period of almost one calendar year as opposed to four months in the instant case (March 2020 – June 2020). Following a plea of 'guilty' the lead defendant, Gallagher, who was the organiser, received a sentence of nine years' imprisonment. The judge identified a starting point of 12 years in that case."

[10] In the consideration portions of the leave judgment, Scofield J was of the view that were it only the drugs charges that he was considering he would be minded to grant leave. However, taking into account the totality of the other offending he *considered* that the starting point of 18 years was appropriate.

Consideration

[11] In the prosecution opening it is submitted:-

"The prosecution submit that it can be inferred to the criminal standard that the defendant has an

organisational role (emphasis added) in the importation and supply of commercial quantities of drugs involving multiple kilos, primarily involving cocaine, but also cannabis. A similar way of describing this role is *significant* (emphasis added)."

I have added the emphasis because Mr. Magee points to "significant" within the Sentencing Advisory Councils definitive guidelines and asserts that this means a lower starting point applies. With respect, the Northern Ireland Court of Appeal in *R v McCaughey and Smyth* [2014] NICA 61 was clear that whilst the English guidelines may provide, at times, a useful basis for analysis they do not apply in this jurisdiction. The slavish application of the English guidelines can lead to an artificially high or low starting point.

[12] In this case, it is clear that the defendant in this case was centrally involved in the organization, supervision and control of the importation of significant commercial quantities of cocaine. The encrochat messages sent between this defendant and others clearly show that he fulfilled a command and control capacity to move multi-kilo consignments of Cocaine.

[13] I am satisfied that the following aggravating features are present:-

- (a) central involvement in organizing and supervising large scale cocaine importation/distribution;
- (b) the use of the encrochat network. In some cases this factor is not a large aggravating factor. Some defendants are little more than street dealers. Others are not. I am satisfied that in this case the defendants use of the encrochat network was to facilitate and conceal commercial scale drugs criminality;
- (c) the defendants relevant criminal record;
- (d) the presence of related and associated financial offending. Under *R v Cooper*, I make it clear that I am taking this into account in relation to totality rather than as a free standing offence.

[14] I am equally satisfied that the following mitigating factors apply:-

- (a) the defendant pleaded guilty without seeking to avail of any potential legal arguments and in accordance with my view in *R v O'Loughlin* I will afford him full reduction for his plea;
- (b) the defendant has clearly used his time in prison to full effect. It may well be that his incarceration has caused him to rethink his lifestyle and to reflect upon the "large parts of his life wasted". In addition, Dr. East's report is of some value. Whilst there is a clear need for general deterrence in cases

involving significant trafficking in Class A drugs, the Northern Ireland Court of Appeal in recent cases have cautioned that where deterrence applies there is still a need to factor in personal mitigation. I make it clear that in this case I have done so in so far as I think proper given the serious nature of the defendants offending.

[15] Mr. Magee has submitted that I should make some adjustment because only part of the defendant's time in prison has been spent on remand. This is due to his serving 16 months of the 32-month sentence imposed in Belfast Crown Court. I do not think that this is a submission that can be sustained. Whilst on bail for these offences, the defendant committed a further significant drugs offence. The commission of a further offence whilst on bail is a serious matter and the court in imposing the 32-month sentence will have undoubtedly taken it into consideration. Further offences, committed whilst on bail, often result in additional time or consecutive sentences when dealt with after the index sentence. Whilst the situation in this case is that the index sentence is being imposed after, it is clear that author of that misfortune is the defendant himself and that there is no procedural unfairness involved.

Conclusion

[16] After reflecting fully upon the aggravating and mitigating features of this case, I am satisfied that the minimum sentence which I would have imposed for the totality of the defendant's offending had he been convicted by a jury would have been 12 years. I will make a full reduction of one third to reflect his plea of guilty and I will headline on the importation offences. Accordingly, I impose the following sentences:-

Count 1 Conspiracy to possess Class A (cocaine) w/intent to supply

6 years (3 +3)

Count 3 Conspiracy to fraudulently import Class A (cocaine)

8 years (4 + 4)

Count 4 Conspiracy to fraudulently import Class A (cocaine)

8 years (4+4)

Count 9 Conspiracy to possess Class A (cocaine) w/intent to supply

6 years (3+3)

Count 30 Conspiracy to possess Class A (cocaine) w/intent to supply

6 years (3+3)

Count 31 Fraudulently importing Class A (cocaine)

8 years (4+4)

Count 32 Conspiracy to possess Class A (cocaine) w/intent to supply

6 years (3+3)

Count 33 Being concerned in the supply of Class A (cocaine)

6 years (3+3)

Count 34 Possession of Class A (cocaine) w/intent to supply

6 years (3+3)

Count 35 Offering to supply Class A (cocaine)

6 years (3+3)

Count 36 Possession of a Class A drug (cocaine) w/intent to supply

6 years (3+3)

Count 37 Possession of a Class B drug (cannabis) w/intent to supply

3 years (18 months + 18 months)

Count 38 Conspiring to fraudulently import Class A (cocaine)

8 years (4+4)

Count 39 Possessing criminal property namely £120,000 cash. This count to be amended will relate to £250k cash.

4 years (2+2)

All sentences will run concurrently.

Offender levy as appropriate.